

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,565
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals the decision by the Office of Child Support (OCS) applying an income tax refund intercepted from his ex-wife toward his ANFC child support debt rather than turning it over to him. The issue is whether OCS's action is in accord with the pertinent regulations. The following facts are not in dispute.

FINDINGS OF FACT

1. The petitioner and his minor child have been on and off ANFC for the past three years. In December, 1997, during which time the petitioner was working, and not receiving ANFC, the Family Court entered an order establishing a monthly child support amount and creating a "debt" payable by the petitioner's ex-wife to the Department of Social Welfare (DSW) of \$1,370 for ANFC that had been previously paid to the petitioner and his child.

2. Sometime in the ensuing months the petitioner notified the Internal Revenue Service that his ex-wife owed him back child support, so that IRS would send to him any tax refund that was due to her for the year 1997.

3. In March, 1998, the petitioner lost his job and reapplied for ANFC, which was granted as of April 1, 1998.

4. When he applied, the petitioner did not tell DSW that he was expecting to receive his ex-wife's tax refund.

5. About two weeks later, however, the petitioner recalls calling DSW and inquiring if he could keep this tax refund if it was sent to him. The petitioner maintains that he was advised that he could.¹

6. Unbeknownst to the petitioner, however, was that his receipt of ANFC meant that IRS would send to OCS any tax refund for his ex-wife that was payable to the petitioner.

7. On April 29, 1998, OCS received the petitioner's ex-wife's intercepted tax refund for 1997 in the amount of \$1,215. Because the petitioner's outstanding ANFC debt set by the Family Court the previous December (see supra) exceeded this amount, OCS applied the entire tax refund to this debt and did not turn any of this money over to the petitioner.

8. The petitioner concedes that when he applied for ANFC he signed a statement acknowledging the legal requirement that he assign to DSW all his rights to any and all child support payable to him.

9. The petitioner maintains, however, that if he knew OCS would keep the income tax refund once he was on ANFC he would have held off applying for ANFC until after he had

¹It is presumed that the petitioner was also advised that it would count as income toward the calculation of his ANFC for the month in which it was received (although this fact is not crucial).

received the refund himself.

10. The petitioner does not maintain, however, that anyone from OCS or DSW misled him or gave him any erroneous information at the time he applied for ANFC. He also concedes that when he called DSW inquiring about the tax refund and was not advised that it would be sent to OCS, he had already been paid his ANFC for April.

ORDER

The decision by OCS is affirmed.

REASONS

As a condition of ANFC eligibility an applicant must assign to DSW all rights to support that any household member might have. W.A.M. § 2331.31, 33 V.S.A. § 3902. Federal and state regulations also provide that when a responsible parent owes an arrearage of child support the agency may apply any amount received in excess of the current month's obligation to any months of ANFC previously paid for which the agency has not been reimbursed by the responsible parent. 45 C.F.R. § 302.51(b)(4) and W.A.M. § 2331.37.

In this case, there was an outstanding court order in effect creating a debt to DSW for ANFC previously paid to the petitioner that was in excess of the amount of the tax refund that was intercepted in April, 1998. Under the above

provisions, it is clear that OCS was required to apply this refund in its entirety to the petitioner's ex-wife's current and past due obligation to DSW.

The petitioner is correct that had he waited to apply for ANFC until after the income tax refund was sent he could have kept this money himself and then applied for ANFC. However, the petitioner does not allege that anyone at DSW or OCS gave him any misinformation in this regard. He admits that these agencies did not know he was expecting this refund when he applied for ANFC; and he admits that his ANFC had already been paid for the month of April by the time he informed DSW of the refund. Even though the information he later received from DSW was incorrect, other than falsely raising his expectations, it did not result in him taking, or failing to take, any action to his detriment.

Inasmuch as the decision by OCS was in accord with the above regulations the Board is bound by law to affirm it. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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